

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 168 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AIYAZ GULAM RASUL JARDOSH

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MS HANSABEN PUNANI AGHP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 2nd September, 1998 made by the Commissioner of Police, Surat city, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act,

1985 [hereinafter referred to as, 'the Act'].

3. Alongwith the order of detention, the petitioner is also furnished the grounds of detention. While recording the subjective satisfaction, the detaining authority has relied upon two offences punishable under Chapter XVI of the Indian Penal Code, registered against the petitioner and two statements made by the witnesses in respect of the petitioner's nefarious activities and its adverse affect on the public tranquillity. Besides the said registered offences, the police has also recorded statements of two witnesses who have stated about incidents that occurred on 9th July, 1998 and 19th June, 1998. It is alleged that on 19th June, 1998 at around 8.00 p.m., the petitioner and his accomplice had intercepted the witness and his friend on the road and tried to rob them, and the witness having resisted, he was beaten by the petitioner. Upon witness raising an alarm, the people had gathered there. With a view to dispersing the people, the petitioner and his accomplice pursued them with lethal weapons like sword and Dharia. A similar incident is reported to have occurred by the second witness on 9th July, 1998 at around 9.00 p.m. In the said incident also, the petitioner is alleged to have used sword for committing the crime and for dispersing the crowd gathered there. On the basis of above evidence, the detaining authority has held that the petitioner is a 'dangerous person' within the meaning of Section 2 (c) of the Act and that his activities are prejudicial to the maintenance of public order.

4. The impugned order has been challenged on the ground that even if the allegations made against the petitioner were believed, the petitioner's activities can at the most be said to be detrimental to the maintenance of law and order and it cannot amount to disturbance of the public order. Each of the offences, registered or unregistered, is directed against a particular individual/individuals and cannot affect the even tempo of life or the public tranquillity. Besides, the detaining authority has wrongly claimed privilege under Section 9 (2) of the Act by with-holding the names and other particulars of the witnesses. In absence of such particulars, the petitioner's constitutional right to make effective representation has been infringed. The impugned order is, therefore, vitiated and requires to be quashed and set-aside.

5. I am afraid I cannot agree with the either of the above contentions. I have perused the complaints lodged

in each of the aforesaid two offences. The manner in which the said offences are alleged to have been committed by the petitioner and his accomplice is sufficient to hold the petitioner's activities to be prejudicial to the maintenance of public order. Further, the privilege claimed under Section 9 (2) of the Act cannot be said to be unjustified. The statements of both the witnesses have been duly verified by the concerned police officer. Both the witnesses were offered police protection and inspite of such an offer being made, both of them have refused to give statements against the petitioner, unless they were assured anonymity. This is sufficient to hold that but for the assurance of anonymity, these witnesses were not ready to give evidence against the petitioner. The privilege claimed by the detaining authority, is therefore, fully justified. This contention is, therefore, required to be rejected.

6. For the aforesaid reasons, the petition is dismissed. Rule is discharged.

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Prakash\*